# First Nations Water Rights in British Columbia

*A Historical Summary of the rights of the Ohamil First Nation*

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**MINISTRY OF ENVIRONMENT, LANDS and PARKS**
**WATER MANAGEMENT BRANCH**

# *FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:*

## *A Historical Summary of the rights of the Ohamil First Nation*



| | |
|---|---|
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Gary Robinson
Project Manager
Water Management Branch

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# FIRST NATION WATER RIGHTS REPORT


**BAND:** Ohamil

**ADDRESS:** Comp. 4, Site 22, R.R. 2, Hope BC, V0X 1L0

**CHIEF:** Albert McHalsie (Yewal Siya:m)

**PHONE:** 869-2627 **FAX:** 869-9903

**AFFILIATION:** Sto:lo Tribal Council


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## LOCATION:

The Ohamil Band occupies three reserves situated within the Cascade Mountain Range, ranging from an area southeast of Hope to an area immediately west of Yale. These reserves range in size from 63 to 181.4 hectares. The Ohamil reserves include:

Kuthlalth No. 3 Ohamil No. 1 Wahleach Island No. 2

Of these reserve lands water rights have been issued on Kuthlalth Reserve No. 3. This is a 160-hectare reserve, which is located on the left bank of the Fraser River in an area west of the town of Yale.

The most recent population figures from the Ministry of Finance indicate that the Ohamil Band's total population, including registered and non-registered members living on and off-reserve, is 93.

The Ohamil reserves are located within the Cascade Mountain Range in the Coastal Western Hemlock Biogeoclimatic Zone. Coastal Western Hemlock and Amabilis Fir are the dominant climax trees within this zone, although several other species are common. Abundant rainfall and mild temperatures make the forests within this biogeoclimatic zone some of the most productive in British Columbia. The Ohamil reserves lie at elevations ranging from 100 to 900 metres above mean sea level, and experience climate ranging from an average daily temperature of -5 to -10 degrees centigrade in January, to between 16 and 20 degrees centigrade in July. The average annual rainfall for this area is 100 to 250 centimeters.

The only water course of significance is Kuthlalth Creek. This creek flows northwest through Kuthlalth Reserve No. 3 before it enters the left bank of the Fraser River.

## WATER ALLOCATIONS:

There are no records of any allocations made by either Indian Reserve Commissioners or Orders In Council of the Lieutenant Governor in Council. However, the water rights of the Ohamil Band have been recorded or affected by three actions of government over the years.

1) Determinations of the Board of Investigation, under the *Water Act 1914,* of claims of the Department of Indian Affairs, and subsequent issue of water licences.

2) Granting of water licences from Federal Government application for licences for the use of water on reserves.

3) Actions to amend, cancel or record as abandoned rights under licence pursuant to provisions in the *Water Act.*

## HISTORY, CURRENT STATUS AND NOTES:

The history of water rights, the current status of rights, and notes for the Ohamil Band with respect to Kuthlalth Creek is as follows:

### Kuthlalth Creek

**History:**

**Apr 24, 1924**

At a final hearing before the Board of Investigation, acting pursuant to the Water Act of 1914, the Board determined that on the 26th day of September, 1888, there was filed in the office of the Dominion Lands Agent at New Westminster, B.C., a bona fide application for a record of water from Kuthlalth River for use on Kuthlalth Reserve No. 3. The Order of the Board, numbered 6617, set out that a conditional licence should be issued which would:

(i) provide for the diversion of water from Kuthlalth Creek,
(ii) take precedence from September 26, 1888,
(iii) authorize diversion of a maximum of 15 acre feet per year for irrigation of 15 acres of Kuthlalth Reserve No. 2, provided that 500 gallons per day, throughout the year, could also be used for domestic purpose.

The Comptroller of Water Rights issued Conditional Water Licence 7528, which embodied the terms and conditions set out in Board Order 6617.

**Jun 21, 1940** A letter written by the Comptroller of Water Rights stated that:

> *"This is a letter to confirm the understanding that arrived at on 1st February, 1938, that Conditional Water Licence No. 7528 Kuthlalth Creek,.. is to be abandoned. This fact has been noted on our records and all rights thereunder are null and void."*

Note: Further information regarding Conditional Water Licence 7528 is not available as the corresponding file was destroyed in 1945.

**Current Status:**

There are no active licences on Kuthlalth Creek.

Water Survey of Canada has no records of streamflow, and there is no further information on water availability.

**Notes:**

1. The Ohamil Band's licenced water rights were lost as a result of the abandonment of Conditional Water Licence 7528.

## OTHER INFORMATION:

### Additional Water Records:

The *Schedule of Indian Reserves in the Dominion, 1913,* is a document published by the federal government, recording each Band's water allocations up to 1913. We believe these records are a compilation of Minute of Decisions, Order-in-Councils, and perhaps other documents. However, as original copies of these documents are unavailable, the dates and information cannot be verified.

The allocation in the *Schedule of Indian Reserves in the Dominion* for the benefit of the Ohamil Band, which is inconsistent with our findings, is:

| Reserve | Water Allocation |
|---|---|
| Kuthlalth No. 3 | *"20 inches of water recorded September 25, 1888."*<br><br>Board Order 6617 (Conditional Water Licence 7528) stated that a bona fide application for a record of water from Kuthlalth Creek has been used for beneficial purposes. The Ohamil Band was granted 15-acre feet of water a year. The quantity authorized under the Board Order is less than the amount stated in the Dominion's schedule (20 inches or 133.3 acre feet). |

## Alternate Water Sources:

### Groundwater Records:

Review of records of the Groundwater Section found no evidence of wells located on any of the Ohamil reserves. However, the provision of this groundwater information is voluntary and, therefore, cannot be assumed to be complete.

### Municipal Water Sources:

The proximity of the Ohamil reserves to the town of Hope presents the potential for water supply to these reserves via a municipal water system.

| Summary of Water Rights Record | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Ohamil First Nation** | | | | | | | | |
| **Water Source** | **Priority Date** | **Reserve Name** | **File No.** | **Document Type** | **Status** | **Superceded By** | **Licence PUC/MOD & OIC Allotments** | **Comments** |
| Kuthlalth Creek | 1888/09/26 | Kuthlalth # 3 | | C 7528 | Abandoned | | 500 GAD/Domestic 15 AF/Irrigation | The Ohamil Band's licenced water rights were lost as a result of the abandonment of CL7528. |

PROVINCE OF BRITISH COLUMBIA. **WATER RIGHTS BRANCH.** DEPARTMENT OF LANDS.

## CONDITIONAL WATER LICENCE.

(For an Irrigation Purpose.)

WHEREAS the Board of Investigation, constituted and acting under the "Water Act, 1914," duly held an investigation respecting the water set out in the order No. 6617, duplicate of which is hereto attached, and in the said order directed the Comptroller of Water Rights to issue a Conditional licence in respect of the particular record and claim respectively set out therein, and further therein named the terms and conditions to be embodied in the said licence:

NOW, THEREFORE, I, Comptroller of Water Rights of the Province of British Columbia, in pursuance of the said order and in conformity with the "Water Act, 1914," issue this Conditional licence, and declare the rights in and to the use of the said waters held under the said record in respect of the said claim to be such as are set out in the said order; and the terms and conditions of the said order and any exhibits which are therewith incorporated are hereby incorporated herewith and form a part hereof. This licence is appurtenant to Kuthlalth Indian Reserve (No.3 Yale)

Abandoned
1st Dec 1938
File Destroyed
1945

Made and entered this 24th day of April, 1924

E. A. Cleveland
*Comptroller of Water Rights.*

No. 7528

Form No. 1066, W.R.B. (Licence in respect of Board Order)—1,800-1-23—804.

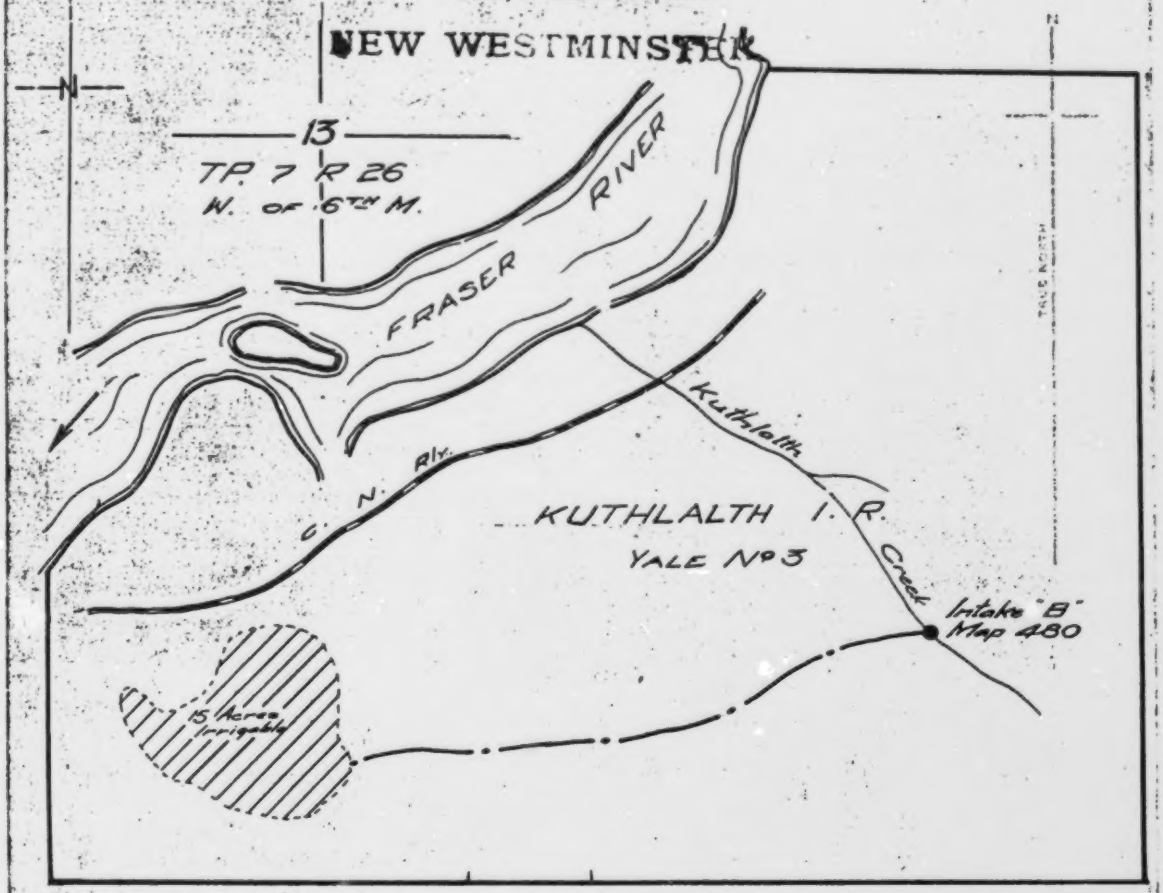
ORIGINAL

# British Columbia

To accompany Board Order No. 6617

ABERCROFT WATER DISTRICT.

Scale, 10 Chains to 1 Inch.




LEGEND
Intake ●
Ditch ——— · ———
Road
The boundaries of the land to which this licence is appurtenant are shown shaded.
15 acres within the said boundaries are claimed to be irrigable as shown hatched

Description of Works to be constructed.
Ditch

Signature J. T. Alexander
J. T. Lane 24 Apr. 1924
C.L. 7528 ) D.O. 6617
File 11.10.I.R.

EXHIBIT "A" R.B.

250-124-4837

Feb. 2nd, 1938.

Copies sent to: Mr. MacKay
Indian Agent, Lytton.
EGM.

---

C.E. Webb, Esq.,
Dominion Water & Power Bureau,
739 Hastings St. W.,
Vancouver, B. C,

Dear Sir:

Please refer to File 11-10-1.

This letter is to confirm the understanding arrived at on 1st February, 1938, that Conditional Water Licence No. 7528, Kuthlaith creek, appurtenant to Yale I.R. No. 3, is abandoned.

This fact has been noted on our records and all rights thereunder are null and void.

A copy of this letter is being sent to Mr. MacKay and the Indian Agent.

Yours very truly,

KD/VF

Comptroller of Water Rights.

PROVINCE OF BRITISH COLUMBIA. | WATER RIGHTS BRANCH. | DEPARTMENT OF LANDS.

# DETERMINATION AND ORDER.

(FOR A CONDITIONAL WATER LICENCE FOR IRRIGATION PURPOSES.)

BY THE BOARD OF INVESTIGATION
UNDER THE "WATER ACT, 1914."

In the Matter of the Claims of the Department of Indian Affairs to Rights to the Use of the Waters

of Kuthlalth Creek a tributary of Fraser River.

in the neighbourhood of Yale, in the

NEW WESTMINSTER
Ashcroft Water District.

NOW, on the 10th day of June, 1920, the above-entitled matter coming on regularly for final hearing before the Board of Investigation; due notice having been given of the time and place of hearing; all and every the steps required under the Act to be taken by the Board before a determination of the said rights and claims should be made having been taken; all evidence, testimony, and proofs filed with the Board or presented in the above-entitled matter having been duly considered; a quorum of the Board being present at the hearing; and the Board being now fully advised in the premises, determines with respect to the said claims (which are on file and designated as Indian File No. 11-10-1) that on the 26th day of September 1888 there was filed in the office of the Dominion Lands Agent at New Westminster, B.C. a bona fide application for a record of water from Kuthlalth Creek, a tributary of Fraser River, for use on the Kuthlalth Indian Reserve (no.3 Yale) and that water from the said Creek has been used for beneficial purposes on the said Indian Reserve ,

2. The claims of the Department of Indian affairs with respect to the said waters are allowed by the Board to the extent hereinafter specified, and the Comptroller of Water Rights is hereby directed to issue a conditional licence in respect thereof embodying the following terms and conditions:—

(*a.*) The sources of the water supply is Kuthlalth Creek a tributary of Fraser River.

(*b.*) The points of diversion from the said sources are located as shown in the exhibit marked "A" hereto attached, which is incorporated herewith and made a part hereof, the original of which exhibit is on file in the office of the Comptroller of Water Rights, Parliament Buildings, Victoria, B.C.

(*c.*) The date from which the said licence shall take precedence is 26th day of September, 1888

(*d.*) The purpose for which the water is to be used is irrigation.

(*e.*) The maximum quantity of water per annum which may be used when irrigation is extended to all the lands mentioned in subclause (*g*) of this clause, until lawfully altered, is 15 acre-feet, and the maximum quantity of water which may be used per annum on each acre actually irrigated until lawfully altered is One (1) acre-foot: Provided that where sources of supply other than those named in subclause (*a*) hereof are drawn upon for the irrigation of a part or all of the same lands as are described in subclause (*g*) hereof, the maximum quantity of water which may be used under the licence hereby directed to be issued shall be reduced by the quantity which the licensee may be entitled to use from said other sources of supply: Provided further that when the Engineer of the Water District has accumulated the requisite hydrographic data for determining to the satisfaction of the Comptroller the *pro rata* part of the said total quantity to be apportioned to the licence hereby directed to be issued, the Comptroller shall require the surrender of the licence, and shall amend the same by stating the particular quantity to which the licensee is entitled from the particular sources named therein.

(*f.*) The period of the year during which the water may be used is between the first day of April and the thirtieth day of September.

(*g.*) The water may be used on the Kuthlalth Indian Reserve (No.3 Yale) of which 15 acres are said to be irrigable. The extent and location of the said irrigable lands are more particularly shown in the said Exhibit "A."

(*h.*) The works which are required to be constructed before the issue of a final licence are the clearing, stumping, and levelling of the irrigable lands on the said reserve and the additional works required for conducting thereto the maximum quantity of water hereby authorized to be diverted.

(*i.*) The execution of the said works shall be commenced or resumed on or before the first day of June, 1924, and shall be prosecuted with due diligence and in a workmanlike manner and to the satisfaction of the Comptroller of Water Rights.

(*j.*) The said works shall be completed and the quantity of water to which the licensee is entitled beneficially used for the purpose set out in the licence on or before the first day of November, 1930.

(*k.*) Before any change is made in the said works which would be a material deviation from the plans as approved or the works as accepted by the Comptroller, plans of such proposed change must be filed with the Comptroller and approved by him.

ORIGINAL

(*l.*) The nature and the extent of the incidental uses permitted under the licence are: For domestic purposes, the use of 500 gallons a day of water from any or all the said sources of supply during the whole of the year; and for storage purpose, such quantity of water (not exceeding ---------- acre-feet) as, together with the natural flow-water used hereunder, will be necessary to secure to the licensee the quantity granted hereunder. The water which may be so stored shall be that of ---------- and it may be stored (accumulated) in a reservoir at ----------

---------- between the first day of October in each year and the first day of June in the succeeding year, and may be used as provided for in subclauses (*d*), (*e*), and (*f*) of this clause, but such uses shall not enlarge the quantity of water allowed by subclause (*e*) hereof.

(*m.*) The Board may extend the time for the commencement, resumption, or completion of the execution of the works on being satisfied that it is in the public interest and that it will not injuriously affect the rights of any licensee.

(*n.*) The licence shall not in any way be deemed to be a final licence for the use of water, but shall have the effect only of a conditional licence issued under Part V. of the "Water Act, 1914," and shall be subject to all the provisions of the said Act, including the filing of proof of the completion of the said works and the putting of the water to such beneficial use within the time limited by the provisions of section 117 of the said Act.

3. Pending the issue of the licence hereby authorized to be issued, the terms and conditions of this order shall govern the respective rights of the record-holders or claimants affected thereby.

Made and entered this 24th day of April, 1924

THE BOARD OF INVESTIGATION.

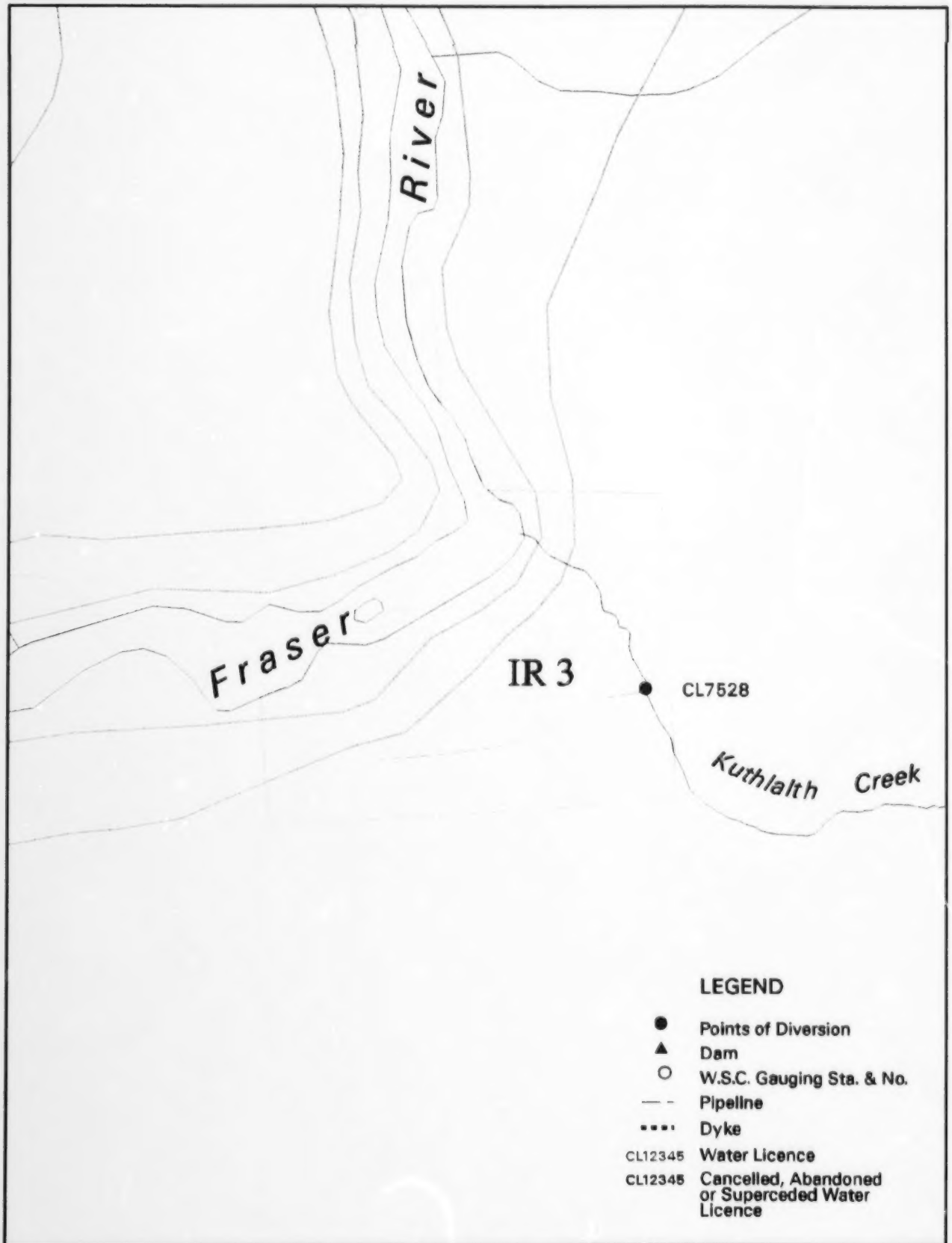
By J. T. Alexander, *Chairman.*

and J. F. Crane, *Member.*

Form 381, W.R.B.—2,000-12-20. Order No. 6617

ORIGINAL

| | | | | | |
|---|---|---|---|---|---|
| | | | | | Union Bar, and Yale Indians in common. *See* note at Ohamil band. |
| 1 | Yale Town | Yale district, in section 14, township 7, range 26, west of 6th meridian. | Yale | 17·50 | Allotted by Commissioner O'Reilly, May 23, 1881. 20 inches of water from Yale creek recorded Sept. 25, 1888. |
| 2 | 4½ Mile reserve | Yale district, in section 24, township 7, range 26, west of 6th meridian, on right bank of Fraser river, 4½ miles above Yale. | " | 15·00 | Allotted by Commissioner Sproat, August 5, 1879. 15 inches of water from the stream on the reserve and all the water from other sources on the reserve recorded Sept. 25, 1888. |
| 3 | Kuthlalth | Yale district, in section 13, township 7, range 26, west of 6th meridian, on left bank of Fraser river, ¼ mile above Yale. | " OHAMIL | 302·00 | Allotted by Commissioner Sproat, August 5, 1879. Foreshore added to this reserve by Order in Council, August 9, 1900; 20 inches of water recorded Sept. 25, 1888. |
| 4 | Qualark | Yale district, in township 6, range 26, west of 6th meridian, on left bank of Fraser river, three miles below Yale. | " | 27·00 | Allotted by Commissioner O'Reilly, May 23, 1881. In railway belt. Surveyed, 1882-4. Approved, May 1, 1886. |
| 5 | Albert Flat | Yale district, in townships 6, 7, range 26, west of 6th meridian, on right bank of Fraser river, three miles below Yale. | " | 160·00 | Allotted by Commissioner Sproat, August 5, 1879. 100 inches of water from Gordon creek, and all the water from other sources on the reserve recorded Sept. 25, 1888. ABANDONED 1925/11/23 |
| 6 | Squeah | Yale district, in township 6, range 26, west of 6th meridian, on left bank of Fraser, five miles below Yale. | " | 40·00 | Allotted by Commissioner O'Reilly, May 23, 1881. 25 inches of water from Squeah creek recorded Sept. 25, 1888. |
| 7 | Kaykaip | Yale district, in township 6, range 26, west of 6th meridian, on left bank of Fraser river, 5½ miles below Yale. | " | 31·00 | Allotted by Commissioner O'Reilly, May 23, 1881. 20 inches of water from Kaykaip creek recorded Sept. 25, 1888. |
| 8 | Stullawheets | Yale district, in township 6, range 26, west of 6th meridian, on right bank of Fraser river. | " | 134·80 | Allotted by Commissioner Sproat, August 5, 1879. 60 inches of water from Stullawheets creek recorded Sept. 25, 1888. |
| 9 | Lukseetsis-sum or Ruby creek. | Yale district, in townships 4, 5, range 27, west of 6th meridian, at mouth of Ruby creek, on right bank. | " | 67·00 | In railway belt. Allotted by Commissioner Sproat, August 5, 1879. Surveyed, 1882-4. Approved, May 1, 1886. The C. P. Ry. crosses this reserve and also has a wye located on it. |
| 10 | Skawahlum | Yale district, in township 6, range 26, west of 6th meridian, on right bank of Fraser river. | Yale Union Bar band. | 11·80 | 20 inches of water from Skawaylak creek recorded Sept. 25, 1888. ABANDONED 1925/11/23 |
| 11 | Puckatholetchin | Yale district, in townships 5, 6, range 26 west of 6th meridian, on right bank of Fraser river, five miles above Hope. | " " .. | 600·50 | 150 inches of water from American Bar creek recorded Sept. 25, 1888. |
| 12 | Klaklacum | Yale district, in township 5, range 26, west of 6th meridian, on right bank of Fraser river, three miles above Hope. | " " .. | 71·75 | 20 inches of water from American Bar creek recorded Sept. 25, 1888. ABANDONED 1925/11/23 |
| 13 | Trafalgar Flat | Yale district, in township 5, range 26, west of 6th meridian, on left bank of Fraser river, 2½ miles above Hope. | " " .. | 172·00 | In railway belt. Allotted by Commissioner Sproat, August 12, 1879. Surveyed, 1881. |
| 14 | Timber reserve | Yale district, in township 5, range 26, west of 6th meridian, on left bank of Fraser river, three miles above Hope. | " " .. | 224·20 | 200 inches of water from Hamlin's creek recorded Sept. 25, 1888, for use on reserve No. 13. |
| 15 | Aywawwis | Yale district, in township 5, range 26, west of 6th meridian, on left bank of the Fraser river, at the mouth of Coquehalle river. | " " .. | 229·40 | |




# OHAMIL FIRST NATION

Scale: 1 : 20,000

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